IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN V. VASUDEO

D.B. CRIMINAL APPEAL NO.368/87
under Section 378 (iii) & (i),Cr.P.C.,
against the Judgment dated 11/12/1986,
passed by Shri Ranveer Sahai, RHJS,
District & Sessions Judge, Jodhpur, in
Sessions Case No.11/85.

DATE OF JUDGMENT :::: 25-09-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for State – appellant.
Mr.Niranjan Gaur, for accused - Respondent.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):-

Aggrieved by the judgment dated 11th December, 1986, passed by the District & Sessions Judge, Jodhpur, in Sessions Case No.11/85, State of Rajasthan has preferred this appeal.

Brief facts concern to the present matter are that Complainant Devkishan lodged an FIR with the Police Station, Khanda False, Jodhpur, on 27.11.1984, stating that his daughter – Kaushalya was married to Vasudev around two and half years back. His daughter visited her parental house on many occasions and made complaint of harassment against her in-laws, for demand of money, he had tried to settle the issue. Thus, in the presence of Bherulal, a document was also prepared. Accused Vasudev demanded Rs.500/- when he was at Bombay, stating that he is not having good economical condition. Vasdev, thereafter, returned from Bobay. At around 3 A.M., his son-in-law Vasudev and his brother Hanuman came and stated that Kaushalya is un-well, on which complainant asked them to get Kaushalya hospitalized and he will see her after completion of duty hours as no-body else was present on the Chowki. Complainant, thereafter, went to accused's residence at 8 O'clock on the following morning, where it was seen that his daughter Kaushalya was strangulated and on asking from Tarachand's wife Dhani, it was given out that there was some hot exchange between the two on previous day. One Jogilal then informed that Vasudev strangulated Kaushalya. The First Information Report was, thereafter, registered under Section 302, IPC, bearing FIR No.218/84. After registration of case, Police conducted usual investigation and, thereafter, filed challan

in the Court of Judicial Magistrate, First Class, No.4, Jodhpur, from where the case was committed to the Committal Court. The trial Court framed charges against the accused under Section 302 of IPC. Accused, however, denied the charge and claimed trial.

At the trial, 17 witnesses were examined by the prosecution and, at the same time, twenty-one documents were produced. In defence, statement of Hanuman as DW 1 was recorded and no document was produced. The statement of the accused was recorded under Section 313 of Cr.P.C.

The learned trial Court, after discussing the entire material available on record, found that the prosecution could not prove its case against the accused beyond doubt. Thus, accused was acquitted by giving the benefit of doubt.

Learned Public Prosecutor urged that though in the medical evidence, it was proved that it was a case of strangulation, yet trial Court tried to confuse the issue to see as to whether it is a case of homicidal or accidental. After raising question in that regard, same remained undecided as no firm conclusions were drawn to show that it is a case of homicidal or accidental. In that regard, the medical evidence on record was ignored. The further

case of the State is that despite of availability of extra-judicial confession, trial Court acquitted by disbelieving the evidence of extra-judicial confession, in erroneous manner, more so, when witness Jogilal had proved the fact of extra-judicial confession. It was lastly urged that the learned trial Court had even failed to consider that accused Vasudev was living with deceased Kaushalya in the same house and he was last seen with the deceased, but, without considering this aspect, judgment was given in favour of the accused. It was, thus, prayed that the judgment of the trial Court may be set aside and the accused be convicted for the offence under Section 302 of IPC.

Per contra, learned counsel appearing for the accused urged that the statement of Jogilal was not found free from doubt in regard to extra-judicial confession by the accused. The learned trial Court discussed the issue at length as to whether the fact regarding extra-judicial confession could be proved by the prosecution or not and it is only after considering the statements of all concerned witnesses that finding was arrived at in favour of the accused. According to the learned counsel, the fact regarding extra-judicial confession was nothing, but a creation of the prosecution as the statement of Jogilal, being not natural and was not otherwise corroborated by any independent witness, the same was not reliable. It was further stated that

Jogilal was an interested witness. So far as the fact pertaining to medical evidence is concerned, it was urged that there was no conclusive proof available to show that it was only a case of homicidal and not accidental. Thus, in those circumstances, the learned trial Court was required to record its finding based on material. However, taking into consideration the entire material available on record, no final conclusions could be drawn. Thus, by assuming it to be a case of homicidal, the matter was further looked into by the trial Court, thereby the issue as to whether it was a case of homicidal or accidental becomes immaterial, because, after considering other evidence on record, the learned trial Court drawn its conclusion that the prosecution failed to prove its case beyond doubt. The issue pertaining to circumstantial evidence to prove the crime of the accused, only one issue pertaining to last seen cannot be conclusively taken as crime of the accused, unless there are corroborating circumstances. In the present case, the room was found locked from inside which was then broken to open it with the help of Police patrolling the area. Therefore, learned counsel urged that merely for the reason that deceased died at her husband's place who was last seen with her, cannot be taken as proof of the crime of the accused, more so, other things did not support the story of the prosecution. According to the learned counsel for the accused, finding recorded by the trial Court deserves to be

affirmed.

We have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

The learned trial Court first considered the case as to whether it is a case of homicidal or accidental and after marshaling the evidence, no conclusions could be drawn either way, therefore, presuming it to be a case of homicidal, the matter was considered to find out as to whether prosecution could prove its case against the accused beyond doubt or not .

The learned trial Court considered the matter, after taking note of four circumstances as shown by the prosecution to prove chain of circumstantial evidence to connect accused with the crime. Thus, considerations were made taking note of the fact that it is a case of circumstantial evidence as there exists no eye witness of the case. The following four circumstances were considered by the trial Court to find out as to whether those circumstances are proved or not and further, as to whether chain of circumstances made out to connect accused with the crime :-

(1) The accused made extra-judicial confession before Jogi Lal.

(2) The accused gave a wrong information to his father-in-law Devkishan regarding condition of Kaushalya, stating that she is suffering from dysentery and vomiting.

(3) Relations of deceased and accused were not cordial in fact, Kaushalya started living with the accused, only after execution of document (Ex.P-7), where accused agreed not to fight with deceased.

(4) The accused used to demand money from Kaushalya from time to time and on his demand not being satisfied, he used to beat deceased.

The first issue pertains to extra-judicial confession made by the accused in the presence of Jogilal. According to us, this issue is of great importance, because if it was proved that accused made extra-judicial confession before Jogilal. Then, this itself is an important circumstance to prove prosecution case. In that regard, statement of Jogilal (P.W.1) is important, who stated that accused Vasudev visited his house on the following day of the occurrence at about 7 A.M. Accused Vasudev stated that he has killed his wife as she was not behaving properly. Said witness further stated that accused Vasudev specifically stated that he had strangulated Kaushalya. Thus, he should ask it to Devkishan so as to settle the matter. Witness, in his examination-in-chief, further stated that after getting

information, he visited accused's house at Soorsagar, where Devkishan and Police were already present. He passed on the information of extra-judicial confession to Devkishan. In the cross-examination, witness stated that fact pertaining to extra-judicial confession was made known to the Police, as well as all the people of colony at around 9.30 A.M. However, the said witness admitted that he had not informed the fact of extra-judicial confession to his wife or to any other person before starting from his place of residence. It was also admitted that accused had not visited his residence at any time earlier and, at the same time, even the witness had not visited accused's house at any time. The statement of Jogilal is tried to be corrobrated by Devkishan (P.W.5) who is father of the deceased. However, the story as stated by Jogilal and Devkishan does not exist in the First Information Report. In the said report, it had not been stated that Jogilal had informed about the fact of extra-judicial confession by the accused which is quite material, because fact regarding extra-judicial confession said to have been made known to Devkishan, but it is not stated in the FIR and no explanation was offered by the prosecution, for that purpose. Even, no independent witness was produced to corroborate the statement of Jogilal and even Investigating Officer has not corroborated the fact regarding extra-judicial confession, more so, when, according to the witness Jogilal, he

disclosed the fact of extra-judicial confession in the presence of Police and colony people but neither colony people were produced to corroborate the said statement nor police corroborate it. The above facts are quite material to show that statement of Jogilal is quite doubtful, more so, under the circumstances that a person can record extra-judicial confession, only before a person who is of his full trust. However, in the present matter, Jogilal could not show his intimacy with the accused, rather it has been admitted that witness and accused never visited each other before. It does not seem to be natural that a person knowing about a crucial fact of murder would not disclose this fact to his wife. Thus, in those circumstances, we find that the evidence produced by the prosecution to prove case of extra-judicial confession is found to be doubtful. Thus, it is not safe to conclude that accused made extra-judicial confession, hence we find no merit in the argument of the learned counsel for the appellant, on this issue.

The second circumstance is that accused gave wrong information to Devkishan regarding ill-health of Kaushalya. In the statement of Devkishan (P.W.5), it was stated that when he was discharging his duties at Police Chowki, Chandpole, then at about 2.30 – 3.00 P.M., accused and Hunaman came and informed him that Kaushalya is unwell. He could not visit

Kaushalya as nobody was present to attend his duty. DW-1 Hanuman stated that he had not visited Devkishan and never stated either by himself or by the accused that Kaushalya is unwell. Since no other witness exists to prove this fact, hence statement of Devkishan cannot be relied, being an interested witness, more so, when DW-1 Hanuman has stated facts otherwise. We further find that it is not such a circumstance which may create a chain of circumstances to prove prosecution case to the hilt.

The third circumstance shown is that accused and deceased were not having cordial relations, therefore, an agreement was written by accused on 11.01.1983 (Ex.P-7), where he had promised that, in future, Kaushalya would not be harassed by him. Bherulal stated that he had written Ex.P-7 and in his cross-examination, stated that when they had tried to settle the issue between the accused and the deceased, then the family members of both of them started showing mistakes of each other, hence accused's father-in-law stated that they are ready to send Kaushalya back, provided an agreement is executed in the manner they like and, accordingly, document was executed. The witness further admitted that Kaushalya had not made complaint regarding demand of money or giving beating by the accused. Rather, according to the witness, it was

a routine case between husband and wife which was settled there. We have perused document (Ex.P-7) also, where we find that accused had agreed to keep cordial relations with the deceased and promised not to harass her in any manner. But, at the same time, Kaushalya was also expected to keep a cordial atmosphere in the houe by loving accused's brother and sister, hence, it cannot be said to be a one sided agreement, showing mistake of accused alone. In any case, the document was executed in the month of January, 1983, whereas incident took place almost after two years, i.e., in November, 1984. Thus, we do not find that the said document can prove or create a circumstance to establish connection of the accused with the crime, more so, when Bherulal had already explained as to in what circumstances, said document was executed.

The last circumstance is regarding demand of money. In that regard, statement of PW 5 Devkishan is material who had stated that after six months of marriage, Kaushalya informed her about demand of money by accused Vasudev, but witness was not in a position to specify the time and even could not specify as to when any demand of accused was satisfied. The witness admitted that it is only on one or two occasions that such complaint was made by Kaushalya. However, he further stated that his wife Vidya was giving money to Kaushalya which

was to the tune of Rs.100/- to Rs.200/-. Smt. Vidya (P.W.15), in her statement, failed to specify as to when she had given money to Kaushalya. However, if her statement is also seen, then it shows that total Rs.600/- seems to have been given to Kaushalya during the entire intervening period, after marriage, though, in cross-examination, said witness Vidya could not state as to when she had taken money on loan from Sukhmal and Sukhmal was not produced by the prosecution to prove that fact. The other material aspect is in regard to Ex.P-8 which is a letter said to have been written by accused while at Bombay, demanding a sum of Rs.40,000/-, though accused has denied execution of the said letter. The prosecution has not produced any evidence to show that such letter was written by the accused. Even if we consider this aspect, then, looking to the statement of PW-5 Devkishan and PW-15 Vidya, the demand of accused used to be to the tune of Rs.100/- to Rs.200/-. Thus, all of sudden, a demand of Rs.40,000/- becomes unnatural. Therefore, it is not safe to infer that the prosecution could prove this issue beyond doubt.

We find that the prosecution failed to prove its case by producing chain of circumstances to connect accused with the crime, it is not safe to convict accused under Section 302 of the IPC.

We have even carefully gone through the finding of the trial Court and perusal of those findings does not reveal that same are either perverse or based on surmises and conjectures. Thus, in view of the discussion made by us, there exists no ground to interfere in the judgment of the trial Court. The appeal preferred by the State cannot be accepted, hence same is dismissed. The judgment of the trial Court is accordingly affirmed. The accused need not surrender in view of the acquittal by the trial Court and affirmed by us.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.